

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

IMPLICIT, LLC,

Plaintiff,

v.

NETSCOUT SYTEMS, INC.,

Defendant.

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**Civil Action No. 2:18-cv-53-JRG
LEAD CASE**

JURY TRIAL DEMANDED

DOCKET CONTROL ORDER

In accordance with the scheduling conference held in this case, it is hereby ORDERED that the following schedule of deadlines is in effect until further order of this Court:

Court's Proposal	New Deadline	
September 9, 2019		*Jury Selection – 9:00 a.m. in Marshall, Texas Before Judge Rodney Gilstrap
August 12, 2019		*Pretrial Conference – 9:00 a.m. Marshall, Texas before Judge Rodney Gilstrap
August 7, 2019		*Notify Court of Agreements Reached During Meet and Confer The parties are ordered to meet and confer on any outstanding objections or motions <i>in limine</i> . The parties shall advise the Court of any agreements reached no later than 1:00 p.m. three (3) business days before the pretrial conference.
August 5, 2019		*File Joint Pretrial Order, Joint Proposed Jury Instructions, Joint Proposed Verdict Form, Responses to Motions <i>in Limine</i> , Updated Exhibit Lists, Updated Witness Lists, and Updated Deposition Designations

July 29, 2019		<p>*File Notice of Request for Daily Transcript or Real Time Reporting.</p> <p>If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and e-mail the Court Reporter, Shelly Holmes, at shelly_holmes@txed.uscourts.gov.</p>
July 22, 2019		<p>File Motions <i>in Limine</i></p> <p>The parties shall limit their motions <i>in limine</i> to issues that if improperly introduced at trial would be so prejudicial that the Court could not alleviate the prejudice by giving appropriate instructions to the jury.</p>
July 22, 2019		Serve Objections to Rebuttal Pretrial Disclosures
July 8, 2019	July 12, 2019	Serve Objections to Pretrial Disclosures; and Serve Rebuttal Pretrial Disclosures
July 1, 2019		Serve Pretrial Disclosures (Witness List, Deposition Designations, and Exhibit List) by the Party with the Burden of Proof
June 3, 2019		<p>*File Motions to Strike Expert Testimony (including <i>Daubert</i> Motions)</p> <p>No motion to strike expert testimony (including a <i>Daubert</i> motion) may be filed after this date without leave of the Court.</p>
June 3, 2019		<p>*File Dispositive Motions</p> <p>No dispositive motion may be filed after this date without leave of the Court.</p> <p>Motions shall comply with Local Rule CV-56 and Local Rule CV-7. <u>Motions to extend page limits will only be granted in exceptional circumstances. Exceptional circumstances require more than agreement among the parties.</u></p>
June 3, 2019	May 29, 2019	Deadline to Complete Expert Discovery
May 13, 2019		Serve Disclosures for Rebuttal Expert Witnesses

April 22, 2019	April 16, 2019	Deadline to Complete Fact Discovery and File Motions to Compel Discovery
April 22, 2019		Serve Disclosures for Expert Witnesses by the Party with the Burden of Proof
April 24, 2019		Deadline to Complete Mediation The parties are responsible for ensuring that a mediation report is filed no later than 5 days after the conclusion of mediation.
April 17, 2019		Comply with P.R. 3-7 (Opinion of Counsel Defenses)
March 27, 2019		*Claim Construction Hearing – 1:30 p.m. Marshall, Texas before Judge Rodney Gilstrap
March 13, 2019		*Comply with P.R. 4-5(d) (Joint Claim Construction Chart)
March 6, 2019		*Comply with P.R. 4-5(c) (Reply Claim Construction Brief)
February 27, 2019		Comply with P.R. 4-5(b) (Responsive Claim Construction Brief)
February 13, 2019		Comply with P.R. 4-5(a) (Opening Claim Construction Brief) and Submit Technical Tutorials (if any) Good cause must be shown to submit technical tutorials after the deadline to comply with P.R. 4-5(a).
February 13, 2019		Deadline to Substantially Complete Document Production and Exchange Privilege Logs Counsel are expected to make good faith efforts to produce all required documents as soon as they are available and not wait until the substantial completion deadline.
January 30, 2019		Comply with P.R. 4-4 (Deadline to Complete Claim Construction Discovery)
January 23, 2019		File Response to Amended Pleadings

January 9, 2019		<p>*File Amended Pleadings</p> <p>It is not necessary to seek leave of Court to amend pleadings prior to this deadline unless the amendment seeks to assert additional patents.</p>
January 2, 2019	January 9, 2019	Comply with P.R. 4-3 (Joint Claim Construction Statement)
December 12, 2018		Comply with P.R. 4-2 (Exchange Preliminary Claim Constructions)
November 21, 2018	November 19, 2018	Comply with P.R. 4-1 (Exchange Proposed Claim Terms)
August 13, 2018	August 31, 2018	Comply with P.R. 3-3 and 3-4 (Invalidity Contentions)
July 23, 2018		<p>*File Proposed Protective Order and Comply with Paragraphs 1 & 3 of the Discovery Order (Initial and Additional Disclosures)</p> <p>The Proposed Protective Order shall be filed as a separate motion with the caption indicating whether or not the proposed order is opposed in any part.</p>
July 16, 2018		<p>*File Proposed Docket Control Order and Proposed Discovery Order</p> <p>The Proposed Docket Control Order and Proposed Discovery Order shall be filed as separate motions with the caption indicating whether or not the proposed order is opposed in any part.</p>
July 9, 2018		Join Additional Parties
July 5, 2018		*File Notice of Mediator
June 18, 2018		Comply with P.R. 3-1 & 3-2 (Infringement Contentions)

(*) indicates a deadline that cannot be changed without showing good cause. Good cause is not shown merely by indicating that the parties agree that the deadline should be changed.

ADDITIONAL REQUIREMENTS

Notice of Mediator: The parties are to jointly file a notice that identifies the agreed upon mediator or indicates that no agreement was reached. If the parties do not reach an agreement, the Court will appoint a mediator. The parties should not file a list of mediators to be considered by the Court.

Summary Judgment Motions, Motions to Strike Expert Testimony, and Daubert Motions: For each motion, the moving party shall provide the Court with two (2) copies of the completed briefing (opening motion, response, reply, and if applicable, surreply), excluding exhibits, in D-three-ring binders, appropriately tabbed. All documents shall be single-sided and must include the CM/ECF header. For expert-related motions, complete digital copies of the relevant expert report(s) and accompanying exhibits shall be submitted on a single flash drive. These copies shall be delivered as soon as briefing has completed.

Indefiniteness: In lieu of early motions for summary judgment, the parties are directed to include any arguments related to the issue of indefiniteness in their *Markman* briefing, subject to the local rules' normal page limits.


Motions for Continuance: The following excuses will not warrant a continuance nor justify a failure to comply with the discovery deadline:

- (a) The fact that there are motions for summary judgment or motions to dismiss pending;
- (b) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
- (c) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.

Amendments to the Docket Control Order (“DCO”): Any motion to alter any date on the DCO shall take the form of a motion to amend the DCO. The motion to amend the DCO shall include a proposed order that lists all of the remaining dates in one column (as above) and the proposed changes to each date in an additional adjacent column (if there is no change for a date the proposed date column should remain blank or indicate that it is unchanged). In other words, the DCO in the proposed order should be complete such that one can clearly see all the remaining deadlines and the changes, if any, to those deadlines, rather than needing to also refer to an earlier version of the DCO.

Proposed DCO: The Parties' Proposed DCO should also follow the format described above under “Amendments to the Docket Control Order (‘DCO’).”

So ORDERED and SIGNED this 19th day of July, 2018.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE